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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MOP/170057

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 9, 2015, under Wis. Stat., §49.45(5), to review a decision by the Grant County Dept. of Social Services to recover Medical Assistance (MA), a hearing was held on January 27, 2016, by telephone. Hearings set for December 2, 2015 and January 7, 2016 were rescheduled at the petitioner's request.

The issue for determination is whether the county correctly determined an MA overpayment.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

I

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED]  
Grant County Dept. of Social Services  
P.O. Box 447  
Lancaster, WI 53813

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Grant County.
2. In 2014 petitioner received BadgerCare Plus (BC+) MA in a household that included her husband and children. A review was completed in March, 2014. At the time budgeted household income was from petitioner's husband's job with [REDACTED] at \$464.73 weekly, which, for BC+ purposes, was \$1,858.92 monthly. A notice dated March 19, 2014 informed the couple that they

- would receive BC+ with no premium, and that they should report to the county if monthly income rose above \$2,664.17.
3. Petitioner's husband's income in April, 2014 was \$3,350.76. It continued to be above \$3,000 monthly thereafter with only a couple exceptions. The household did not report the increase to the county.
  4. The couple filed a six-month report form in August, 2014. No increase in income was reported.
  5. In late January, 2015, a renewal form was filed. [REDACTED] income was reported to be \$23.61 per hour, 33 hours per week (\$779 per week). The increase was implemented effective March 1, 2015.
  6. The county discovered the increased income, and also that petitioner's husband briefly had a second, unreported job, via a state wage match. The county obtained actual income from [REDACTED]. The second employer, [REDACTED], initially did not respond and the county averaged the income showing on the wage match.
  7. By a notice dated October 26, 2015, the county informed petitioner that the household was overpaid \$1,446 in MA from June 1, 2014 through January 31, 2015, claim no. [REDACTED], with petitioner and her husband liable for the claim. The overpayment was for premiums that would have been due had the higher income been reported. After petitioner appealed the county received the [REDACTED] income information; the county then recalculated the overpayment to be \$1,476.

### DISCUSSION

MA overpayment recovery is authorized by Wis. Stat., §49.497(1):

(a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665.
2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

See also the department's BC+ Handbook, Appendix 28.2. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

The Handbook, App. 28.4.2 provides that if an overpayment is caused by a failure to report increased income, and the household would have remained eligible for BC+ but with increased premiums, the overpayment is the difference between the premiums originally paid and the correct premiums based on the actual income. In this case no premiums were paid originally, so the overpayment is the full amount of the premiums that should have been paid.

BC+ households must pay premiums for the adults if income is greater than 100% of the federal poverty level (FPL) and for children if household income is over 201% of the FPL. Handbook, App. 19.1. 100% of the FPL currently is \$2,367.50 for a five person household, Handbook, App. 50.1. In March, 2014 petitioner's budgeted \$1,884 income would have been below that level, but in April, 2014 the \$3,350 actual income would have been well above that level, and thus there would have been premiums.

I reviewed the calculations done after the [REDACTED] information was received. They were correct.

Petitioner's primary concern was why it took so long for the county to discover the overpayment. The primary reason is that when petitioner's six-month report form was filed it noted no change in income. The county at that point had no reason to suspect that the report was filed incorrectly. I checked the computer record. The August, 2014 monthly report showing no increase in income is in the record, and there is no other suggestion that income increased until the January, 2015 renewal, which the county acted upon.

Petitioner's husband also noted a discrepancy in the amount of income reported by his employer. However, I reviewed the record closely, and the amounts reported by the employer were accurate. The confusion is that the employer report lists, at the top, "Pay ending," but then lists the date of the paycheck at the bottom. Thus from the top date it looks like petitioner's husband was paid five times in December, 2014, but for the date "Pay ending" November 28, 2014, the check date was December 3. Thus he was paid six times in December for a total of \$5,290.67.

### **CONCLUSIONS OF LAW**

The county correctly determined that petitioner was overpaid \$1,476 in MA between June, 2014 and January, 2015 because she failed to report an increase in income.

**THEREFORE, it is**

**ORDERED**

That the petition for review is hereby dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in

this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 2nd day of February, 2016

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\sBrian C. Schneider  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on February 2, 2016.

Grant County Department of Social Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability